

Ryder Integrated Logistics, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers, Party in Interest. Case 7-CA-39781

November 12, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND BRAME

On May 6, 1998, Administrative Law Judge Thomas R. Wilks issued the attached decision. The Respondent and the Party in Interest filed exceptions and supporting briefs, the General Counsel and the Charging Party filed answering briefs, and the Respondent and the Party in Interest filed reply briefs. In addition, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified.³

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge's findings that the disputed warehouse employees employed at the Respondent's Redford, and then Canton, Michigan Logistics Optimization Center were not accreted into the existing unit of the Respondent's drivers servicing the GM Detroit/Hamtramck, Michigan plant, and that the Respondent violated Sec. 8(a)(2) and (1) by its February 28, 1997 recognition of the Party in Interest as the representative of these nonaccreted employees. We also agree with the General Counsel, as stated in his cross-exceptions, that this violation taints any subsequent showing of majority status by the Party in Interest. *Garment Workers v. NLRB*, 366 U.S. 731, 736 (1961); *J.E. Leasing Corp.*, 262 NLRB 373, 380 (1982). "Indeed, such acquisition of majority status itself might indicate that the recognition . . . afforded [the Party in Interest] a deceptive cloak of authority with which to persuasively elicit additional employee support." *Garment Workers*, 366 U.S. at 736. Therefore, we find it unnecessary to pass on whether the Party in Interest's purported subsequent majority status was the result of misrepresentations made during its solicitation of employee membership applications.

The judge also found that employee Pat Swift was an agent of Respondent, but not a supervisor. We adopt the judge's finding as to Swift's agency status, and therefore find it unnecessary to pass on his status as a supervisor.

² The first sentence of the second paragraph of the judge's conclusions of law mistakenly refers to Human Relations Manager Betty Burdette. The statements included in this sentence were only made by Pat Swift. We amend the conclusions of law accordingly.

³ In his recommended Order, the judge inadvertently omitted a provision, referred to in his remedy, requiring the Respondent to withdraw

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Ryder Integrated Logistics, Inc., Canton, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as a new paragraph 2(b) and reletter the subsequent paragraphs.

"(b) Withdraw and withhold recognition from District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers, its successors or assigns, as the collective-bargaining representative of loaders, dockmen, and warehousemen employed at its Canton, Michigan LOC facility, and cease giving effect to any collective-bargaining agreement, modification, extension, renewal, or supplemental agreement between it and District 2A as to those employees, until such time as District 2A shall have been certified by the Board as the exclusive bargaining representative of such employees in an appropriate bargaining unit."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

**NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with the closure of our warehouse operations if they refuse to sign membership applications for District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers.

WE WILL NOT threaten employees with the closure of our warehouse operations if they designate the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO as their collective-bargaining representative.

WE WILL NOT recognize and bargain with District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers, its successors, or assigns, as the collective-bargaining representative of loaders, dockmen, and warehousemen employed at our Canton, Michigan LOC facility unless and until that Union has been certified by the National Labor Relations Board as the exclu-

and withhold recognition from the Party in Interest as the collective-bargaining representative of the warehouse employees. We shall modify the recommended Order accordingly.

sive bargaining representative of any such employees in an appropriate unit.

WE WILL NOT give effect to our collective-bargaining agreement with District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers, its successors, or assigns, with respect to the warehouse employees referred to above, and any modifications, extensions, renewals, or supplements that may have been applied to those employees, provided that nothing in the Order shall require our withdrawal or enhancement of any wage increase or other benefits, terms, and conditions of employment that may have been established pursuant to any such agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL reimburse all former and present loaders, dockmen, and warehousemen employed at the Redford, Michigan or Canton, Michigan LOC for all initiation fees, dues, and other moneys, if any, paid by or withheld from them.

WE WILL withdraw and withhold recognition from District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers, its successors or assigns, as the collective-bargaining representative of loaders, dockmen, and warehousemen employed at our Canton, Michigan LOC facility, and cease giving effect to any collective-bargaining agreement, modification, extension, renewal, or supplemental agreement between us and District 2A as to those employees, until such time as District 2A shall have been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees in an appropriate bargaining unit.

RYDER INTEGRATED LOGISTICS, INC.

Ellen Rosenthal, Esq. and Dara Diomande, Esq., for the General Counsel.

Kevin J. Kinney, Esq. (Krukowski & Costello), of Milwaukee, Wisconsin, for the Respondent.

Betsey Engel, Esq., of Detroit, Michigan, for the Charging Party.

Joel Glanstein, Esq. (O'Donnell, Schwartz, Glanstein & Rosen), of New York, New York, for the Party in Interest.¹

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge. The original charge in this proceeding was filed on May 6, 1997, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (the Charging Party or UAW), against Ryder Integrated Logistics, Inc. (the Respondent or Ryder). It is alleged that the Respondent's

agents threatened plant closure to its employees if they supported the Charging Party and also that the Respondent unlawfully extended special privileges to District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers (Party in Interest or District 2A) in violation of Section 8(a)(2) of the Act.

The first amended charge in this proceeding was filed by the Charging Party against the Respondent on July 29, 1997. That charge additionally alleged that the Respondent unlawfully recognized District 2A as the exclusive bargaining representative of its warehouse employees at its Canton, Michigan facility on April 25, 1997, in violation of Section 8(a)(2) of the Act.

On July 31, 1997, the Regional Director partially dismissed the charge in this case. The partial dismissal covered the 8(a)(2) allegations of the unlawful recognition by the Respondent of District 2A. On August 8, 1997, the Charging Party timely appealed the Region's partial dismissal and presented new evidence for consideration. The second amended charge was filed by the Charging Party against the Respondent on September 24, 1997. That charge additionally alleged that in mid-April 1977, the Respondent threatened its Canton warehouse employees with job loss if they did not sign representation authorizations on behalf of District 2A. It also alleged that on or about August 27, the Respondent unlawfully entered into a collective-bargaining agreement with District 2A (i.e., covering the Canton warehouse employees).

A further investigation was conducted. As a result of the investigation, on September 25, 1997, while an appeal of the dismissal was pending before the Office of Appeals of the General Counsel, the Regional Director revoked his July 31, 1997 partial dismissal regarding the 8(a)(2) allegations of unlawful recognition.

The complaint was issued by the Acting Regional Director against the Respondent on October 3, 1997.

The complaint alleged that the Respondent in early to mid-April 1997, coercively threatened its employees with warehouse closure and job loss if they selected the Charging Party as their collective-bargaining representative and if they did not sign applications for membership in District 2A, in violation of Section 8(a)(1) of the Act. The complaint as amended at trial further alleged that on February 28, 1997, the Respondent unlawfully recognized District 2A as the exclusive collective-bargaining representative of all loaders, dockmen, and warehousemen employed by it at its Canton warehouse at a time when District 2A did not represent an uncoerced majority of that unit of employees, in violation of Section 8(a)(1) and 2 of the Act. Finally, the complaint alleged that the Respondent unlawfully entered into and subsequently maintained and enforced a collective-bargaining agreement with District 2A covering that employee unit when District 2A did not represent an uncoerced majority of these employees in violation of Section 8(a)(1) and (2) of the Act.

The Respondent filed a timely answer dated October 16, 1997, which denied the 8(a)(1) allegations and also contended that one of the three alleged threatening agents, Pat Swift, was not a supervisor within the meaning of the Act. With respect to the original 8(a)(1) allegations, it contended that the matter had been settled on August 6, 1997. However, although the Respondent may have executed the partial settlement agreement, the Regional Director had never approved it. The Respondent further denied the 8(a)(2) allegations contending that it had entered into a preexisting collective-bargaining agreement with

¹ The name of the Party in Interest appears here and in the caption as stipulated at the trial.

District 2A covering its drivers and warehouse employees since May 8, 1995, for which District 2A was its representative. Thereafter, the Respondent argued that the Canton warehouse unit was an accretion to a preexisting unit of drivers represented by District 2A. Finally, the answer contended that the complaint was barred by Section 10(b) of the Act, by laches, and that its conduct was a result of its reliance on the Regional Director's dismissal of the original charge. The answer further argued that the dismissal revocation was based on the subsequent bilateral negotiations between the Respondent and District 2A which resulted in a separate warehouse unit contract and was the result of a misinterpretation of "settled Board law. see e.g. *UPIU, Local 1027 (Mead)*, 216 NLRB 486 (1975)."

District 2A moved to intervene as a potentially adversely affected interested party by motion dated October 20, 1977. The Regional Director granted that motion by his order dated November 6, 1997. In the meantime, the Regional Director issued an amendment to complaint on October 23, 1997, which ran only to the requested remedial order therein.

The trial in this matter was held before me in Detroit, Michigan, on December 3, 4, and 5, 1997, at which time all parties were afforded opportunity to adduce into evidence relevant testimony and documentary evidence. Briefs from all four parties were received at the Division of Judges, following an extension of time to do so, no later than January 28, 1998.²

Respondent requested by motion received at the Division of Judges on March 2, 1998, to reopen the record for the receipt of the Regional Director's letter to the parties dated February 10, 1998. In that proffered letter, the Regional Director announced deferral of the Charging Party's petition for certification of representation for a unit of 535 of the Respondent's employees at various locations, including the Canton warehouse, pending resolution of the instant case. The General Counsel by motion received at the Division of Judges on March 10, 1998, opposed that motion on grounds that positions taken by the Charging Party in the representation case are irrelevant to the instant case, that no determination has been made by the Regional Director or the Board as to the issue of appropriate unit in that case (Case 7-RC-21253), and that such action occurred after the events of the complaint in the instant case. I agree. The Respondent's motion is denied. In any event, the Board can clearly take administrative notice of the actions of its Regional Directors and pending petitions for representation for clearly stated relevant reasons.

The briefs submitted by the parties fully delineate the facts and issues and, in form, approximate proposed findings of facts and conclusions. Portions of those briefs have been incorporated herein, sometimes modified, particularly as to undisputed factual narration. However, all factual findings herein are based on my independent evaluation of the record. Based on the entire record, the briefs and my observation and evaluation of witnesses' demeanor, I make the following findings

I. THE BUSINESS OF THE RESPONDENT

At all material times, the Respondent, with a place of business in Canton, Michigan (the Respondent's Canton facility), has been engaged in the interstate shipping, sorting, and docking of automobile parts. During the calendar year ending De-

cember 31, 1996, the Respondent, in conducting its Canton business operations, derived gross revenues in excess of \$1 million. During the same period of time, the Respondent, in conducting its business operations, purchased goods and materials valued in excess of \$50,000 from points located outside the State of Michigan and had them shipped directly to its Michigan facilities.

It is admitted, and I find, that at all material times, the Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

It is admitted, and I find, that at all material times, District 2A has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

1. Business background

The city of Detroit is situated in southeast Michigan. On its southern limit is the Detroit River, which forms part of the United States-Canadian border. Woodward Avenue runs about perpendicularly north from the river and divides the city in about half. Located about 6 miles north of the river is the municipality of Hamtramck, which is located to the immediate east of Woodward Avenue.

The municipality of Highland Park lies about 8 miles north of the River. It is adjacent to the northwest corner of Hamtramck and is intersected by Woodward Avenue. Both Hamtramck and Highland Park form enclaves, which are completely surrounded by the city of Detroit. In relatively recent times, the General Motors Corporation (GM) constructed an automobile assembly plant in Hamtramck, which partially protruded into Detroit. That facility is referred to by the parties as Deham. It primarily had assembled Cadillac motor vehicles and relied on various suppliers situated, inter alia, in southern Michigan, Ohio, and Indiana. In 1992, GM decided to revise its assembly methods pursuant to its experience in a coventure with the Toyota motor car company. Its objective was to eliminate waste, improve plant ergonomics and plant safety, and change work stations in order to perform more functions in the same space. Deham served as a pilot plant in this program, which was effectuated there between 1992 to 1994. GM then next proceeded to change its external supply chain.

The Respondent is a successor to Ryder Dedicated Logistics, Inc. It maintains a regional headquarters and facility in Highland Park. Among its customers are eight GM assembly plants. There are about 450-500 Ryder drivers involved in parts delivery services to GM operations from suppliers in the Highland Park facility service area of Michigan, Ohio, and Indiana. These parts are containerized and delivered by a tractor-trailer vehicle which, in turn, must retrieve the empty containers from the assembly plants and return them to the appropriate supplier.

GM had elected to move into a level production system (i.e., where the same events occur in the same sequence in the same fashion every day, at the same rate of work). This allowed the Respondent to schedule in a fixed manner the parts flowing from the supplier community into the assembly plant. In contrast to past operations where suppliers would send as much as 1 month's worth of material at one time into the plant, and then these parts would have to be stored and maneuvered out of the

² The General Counsel's unopposed motion to correct transcript, attached to the brief, is granted, and on p. 234, LL. 12-13 of the transcript is corrected to read "they asked him was this binding us to be up under district 2A."

way with general chaos prevailing, Ryder was able to put together a fixed system that would support the level of production while minimizing the amount of inventory required to be on hand at the assembly plant at any given time. In 1994, GM decided to bid the business (i.e., the external part of the supply chain) and this business was awarded to Ryder with a start date set for September 1994.

Richard Jennings, vice president and general manager for Ryder, testified that because of the Respondent's previous knowledge and experience with automotive manufacturers, its original proposal to GM called for some type of offsite facility, perhaps a cross dock, to accommodate the movement of material into the assembly plant.³ GM did not, however, immediately accept the external warehouse idea, and the business agreement did not incorporate it.

As Ryder began to evaluate the actual date for the Deham assembly plant, they were able to come up with a solution that did not immediately require the LOC. According to Jennings' testimony, the reason that no LOC was required at that time was that the Respondent was able to shorten the pipeline and bring in more frequent delivery of materials so that less space was required in the assembly plant for storage of parts. Jennings testified that although the original business solution had called for a LOC, because of data from GM that was not as accurate as it could have been or due to underestimation of the amount of material that GM had actually been storing in the Deham assembly plant, the shortening of the supply pipeline worked initially.

Shortly after having been awarded the Deham business, Ryder placed a team inside the assembly plant to begin studying alternate solutions. Jennings testified that even prior to the team study, Ryder had recommended to GM a three-plant synergy involving the LOC. This plan, which was presented to GM in November 1994, combined the supply chain activity of three assembly plants into one facility, which would have been known as the LOC. That plan ultimately became a viable business strategy for GM and was put out to bid by GM in April 1995. Ryder received a letter of intent to proceed with that business in October 1995.

The Ryder team initially focused on cost initiatives. Jennings testified that each time the Respondent could eliminate a day's worth of inventory or even a few hours' worth of inventory, they were able to eliminate the need for extensive storage space at the Deham assembly plant. The elimination of inventory resulted in significant economics. The second part of the initiative involved the ability of GM to be able to put vehicles into the marketplace in a much more rapid fashion based on demand. The biggest constraint that GM had in this regard was the inability to change body die molds quickly. By changing body molds, the Deham plant could assemble other model vehicles, such as the Buick Park Lane, as the customer dictated. The body shop needed to grow in order to shorten the change over time. As the body shop grew inside the Deham assembly plant, space available for storing parts was reduced. Ultimately, the actual productive activity space inside the Deham assembly plant became more important to GM than the need to store parts. The LOC project then became a reality and the Respondent was awarded the business in February 1997. This project had been potentially viable since the winter of 1994 and

Ryder had actually received a competitive bid in April 1995. Jennings testified that the Deham project had remained viable because a small change in the production system would eventually need to go offsite to support the assembly plant.

Prior to February 1997, the operation typically functioned in the following manner. Ryder truckdrivers would pick up their trucks and a list of scheduled suppliers from a Ryder facility located in Highland Park, Michigan. The drivers would then pick up parts (which come in containers of various sizes) from the suppliers' plants and bring them to Deham. After being unloaded, the drivers would retrieve empty containers and transport them to the suppliers' plants.

Ryder was ultimately instructed to begin immediate operations on February 14, 1997. Jennings testified that because of the phased-in approach to the business plan, Ryder had been able to secure a lease on a 230,000-square-foot LOC facility in Canton, Michigan, that was being built by a developer, but that lease would not be available until mid-June 1997. Because of the immediate need to relieve pressure on the Deham assembly plant, Ryder had been able to prevail on the same builder-developer to temporarily lease some space in Redford Township at the Redford Industrial Trade Center 15 miles from the Highland Park facility. This was a 45,000- or 50,000-square-foot facility with no parking and a shared entryway with the Postal Service. Jennings testified that this was a temporary measure until the Respondent would be able to occupy the Canton LOC facility.

The Respondent began operations at Redford which at that time essentially consisted of processing empty containers from the Deham plant on March 1, 1997, with the use of temporary employees.

On June 15, 1997, the Canton facility was delivered to Ryder and after the setup phase and the 2-week summer shutdown at the Deham assembly plant, this facility became fully operational on July 15, 1997. All LOC operations have run through and from Canton since that date. The Canton LOC is 35 miles from the Highland Park facility and 32 miles from Deham. Respondent's drivers transported new containerized parts from suppliers to the Canton warehouse for temporary sorting and storage and thereafter to Deham on an as-needed basis. The drivers transported empty containers from Deham to the Canton LOC for sorting and transport from Canton to the original supplier plant. The Redford warehouse only processed empty containers.

2. Labor relations background

In May 1995, the Respondent entered into a collective-bargaining agreement with the Party in Interest, District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers. The contract included an ongoing obligation to meet and bargain over "all matters pertaining to rates of pay, hours, and other conditions of employment." The recognition clause of the collective-bargaining agreement covered:

All drivers/loaders/dockmen/warehousemen/switchers in the employ of Ryder at specific locations and any future remote domicile site created to service this account.

During the term of this collective-bargaining agreement which expires in May 1998, all the employees in the bargaining unit covered by this agreement were drivers, also known as route managers and switchers, with the exception of the warehouse employees and shipping clerks whose status is in dispute

³ The offsite facility or cross dock is actually what will later be referred to as the "Logistics Optimization Center" or "LOC."

in this proceeding and who were not permanently hired until after the LOC operation became operational on about March 1, 1997. They were initially hired as temporary employees at Redford LOC through a temporary employment agency but obtained status as permanent employees of the Respondent on March 29, 1997. Upon hiring, they were told that the Redford facility was only temporary. Fifteen drivers were initially assigned to service the Redford LOC. Jennings testified that in negotiations with District 2A, he explained the intent of the business arrangement with GM to eventually institute an offsite LOC warehouse operation. Jennings testified that it was his intent to negotiate an addendum to the District 2A collective-bargaining agreement to cover warehouse employees. The collective-bargaining agreement provided no warehouse employee wage rates.

On February 25, 1997, Jerry Madrzykowski, District 2A union representative, discovered that Ryder had opened a warehouse in Redford and planned to hire warehouse personnel to service the Deham account. On February 26, 1997, Madrzykowski sent a certified letter to Jennings, seeking recognition and representation for the future warehouse employees. On February 28, 1997, Jennings sent a reply letter to Madrzykowski acknowledging that District 2A represents these warehouse employees and agreed to meet and bargain on all matters with District 2A with respect to these warehouse employees. On or about April 5, 1997, Madrzykowski instructed his union steward, Hal Lindke, to solicit membership applications from the warehouse employees. Those employees consisted of sorters, who placed empty containers in staging areas for movement by forklift (hi-lo) operators onto the truck; forklift operators who removed containers from the trucks; and clerical employees known as "shipping clerks," who tracked the flow of shipments and who processed related documentation. There were about 25 to 28 employees engaged in those positions in a 24-hour-a-day, three-shift operation.

District 2A proceeded to secure membership applications from the warehouse employees. Eleven applications were solicited by Steward Hal Lindke on April 7, 1997, and another 5 or 6 on April 24, 1997. There is a dispute as to whether Lindke misrepresented the purpose of the document and whether the Respondent's agents coerced employees to support District 2A.

On April 13, 1997, Madrzykowski held a drivers' membership meeting in a hall located in Hamtramck, Michigan. Ten to fifteen warehouse employees attended the meeting as guests. At this meeting, the warehouse employees voiced concerns about Ryder drivers potentially bumping warehouse employees from their jobs. In response to their concerns, Madrzykowski told the warehouse employees that they would have their own collective-bargaining agreement. Madrzykowski also told the warehouse employees that they should be able to control their own identity and negotiate their own terms and conditions of employment. An overwhelming majority of drivers expressed agreement.

The first unfair labor practice charge was filed on May 5, 1997, which alleged threats to employees and favoritism to District 2A.

On July 28, 1997, the UAW amended its charge to add an allegation of unlawful recognition by Ryder of District 2A in February 1997. On July 31, 1997, the parties were notified of the Regional Director's decision "that further proceedings are not warranted at this time with respect to the allegations involving favoring and unlawfully recognizing District 2A."

On August 7, 1997, after the partial dismissal of the charge, District 2A met with warehouse employees at the Canton breakroom. Madrzykowski, during a morning and a separate afternoon session, told the employees that the Board's Regional Director had cleared the way for District 2A to represent them in collective bargaining with Ryder. He stated that the employees could have a 3- or 5-year contract, that the warehouse employees would have a separate contract from the drivers, and instructed the employees to select a negotiating committee. Madrzykowski explained that he commenced this meeting as the result of the Region's dismissal of the unfair labor practice charge.

Subsequently, after a five-member negotiating committee was chosen by the warehouse employees, the warehouse employees met with District 2A officials to develop collective-bargaining proposals.

On August 26 and 27, 1997, Ryder and District 2A, along with the warehouse employees' negotiating committee, met to negotiate the collective-bargaining agreement. On August 27, the parties reached agreement and signed a draft agreement covering warehousemen and shipping clerks, but excluding all other employees. The switchers appear to be left under the coverage of the drivers' collective-bargaining agreement. Employee Pascal Smith and Nolan Hall were members of the committee and signatories to the new agreement. During the beginning of October, Ryder began deducting union dues from warehouse employees' paychecks on behalf of District 2A.

The 3-year collective-bargaining agreement provided for wage increases from \$8.25 to \$9.50 per hour and \$2000 in backpay for each warehouse employee.

Subsequently, the Regional Director, during the pendency of an appeal, rescinded the dismissal of the charge and issued the complaint in this case.

3. Accretion

a. The Redford warehouse

The basic operation of the Redford facility was as follows: A driver picked up a truck from Ryder's Highland Park facility (consisting of loads of empty containers from Deham) and drove to the Redford warehouse at its east dock. Once at the Redford warehouse, the driver informed an office clerical of his/her arrival. The clerical advised the driver to either stay with the load or directed the driver to the west side of the warehouse to pick up a load of sorted empty containers going to their respective suppliers. The shipping clerks documented the containers the drivers brought in and shipped out of the warehouse. The empty containers were unloaded from the trucks by forklift operators, also known as hi-lo drivers, and were logged and sorted by the warehouse employees. The forklift operators then collected these sorted containers and loaded them onto another truck on the other side of the warehouse. The driver then took a truck loaded with containers destined for specific suppliers and delivered the containers to their respective suppliers. The forklift operators, not the drivers, loaded or unloaded material from the trucks and operated the forklifts. On occasion, if a load fell out of the back of a trailer into the yard, a driver would pick up and rearrange the load or ask a forklift operator to do so. Drivers did not perform any work inside the Redford warehouse. None of the routes that transported actual containerized parts stopped at the Redford warehouse. Initially, there were 15 drivers assigned to routes that supported the Red-

supported the Redford warehouse.⁴ However, the drivers did not park their trucks at the Redford warehouse facility, and there was no need for switchers to move parked vehicles. Rather, drivers picked up and returned their trucks every day to Highland Park.

Jennings testified that from the time that Ryder made its initial study of the business solution for GM in August or September 1994, it anticipated that they were going to have warehouse people in this supply chain. Jennings testified that without the warehouse people at the LOC, even with a full complement of drivers, the system could not work. Jennings testified that Ryder could not provide the transportation solution required to allow Deham to do the production schedules that they needed to do without the codependence of these groups (i.e., warehouse/drivers). Jennings testified that there would never be a load of containers that came into the Redford LOC that was not handled by a warehouse person and, similarly, without the drivers bringing the containers into the LOC, there would have been no need for the warehouse people.

b. The Canton LOC

Jennings testified that the Redford LOC was restricted by size to handle only empty containers that were on their way back to suppliers and also to serve as a holding facility for some pilot part activity. He testified that the Canton LOC was meant to operate in those two roles, as well as be a facility that would eliminate the space problems that were occurring at Deham. The initial phase of the LOC in Canton also included the processing of containerized parts.

When Ryder began to process containerized parts through the Canton facility, those parts were separated by delivery zone so that parts destined for the west dock at Deham would go to one delivery zone, parts destined for the east dock would go to another delivery zone, etc. Ryder processed the material according to its next storage location throughout the Canton LOC. Additionally, as Canton continued to process returning empty containers, there was some warehousing and inventory of obsolete parts, and the Canton facility is also involved in the transport of empty containers to new suppliers.

Ryder drivers shuttle to Deham in a three-shift operation. There are approximately 20–22 drivers and 4 switchers at the facility, 15 tractors, and 55 trailers—all designed to support the shuttle activity from the LOC to the Deham assembly plant.

According to Jennings, except for a few logistical reasons, Ryder's Highland Park region drivers begin and end their workday at the Highland Park facility. Only three types of drivers report to work at the LOC: (1) those who run between the LOC and Deham with parts and empty containers; (2) switchers who move vehicles from the east LOC dock to the west dock; (3) a few drivers whose routes start at supplier plants in an area west of Canton, for whom it would make no sense for logistical reasons to drive first to the eastern Highland Park. The others, an indeterminate number, report first to the Highland Park facility and end their day there. There are also drivers who depart from the Highland Park facility, drive to a

supplier, and pick up an entire truckload of the same parts that do not need sorting, which can be and are delivered directly to the specific Deham dock without stopping at the LOC.

The Ryder drivers and switchers assigned to the LOC remain on the Highland Park seniority list with the 300 drivers covered by the District 2A collective-bargaining agreement. Eight other GM assembly plants are serviced by Ryder drivers covered by that agreement.

The drivers receive their daily assignments at the LOC, where they maintain lockers and receive their paychecks. A lounge is provided for their exclusive use to which access by warehouse employees is barred. The drivers do not punch a timeclock but drive in and out on a logged schedule. The logs are turned in at the Highland Park facility.

The Deham assembly plant originates a signal through an EDI transaction that goes out to a supplier. That signal is also received by copy at Highland Park. Ryder does an electronics part matching and distributes the signal and a parts manifest to the LOC. The driver at the LOC will then be assigned to make the collection on the route and bring the vehicle back to the LOC. The vehicle is then backed into a preassigned dock immediately or parked in the lot if the arrival is premature according to a predetermined schedule. The Canton LOC attempts to unload three or four vehicles per hour by forklift operators in order to stay level. The driver will go around to the west dock to pick up empty containers to deliver loads to their supplier. As material comes off the vehicle, it is identified by sorters through a scanning device that will determine the delivery zone. Sorters or forklift operators separate the load. Forklift operators move the material across the dock onto the appropriate vehicle by destination and then, either by volume or a predetermined time, it is sent to the Deham assembly plant with another driver who is also assigned to the LOC.

When the tractor-trailer pulls into a door at the LOC with a load of containerized parts, the material is unloaded by forklift operators who also do the loading. These parts are typically staged in one of two staging areas in the LOC. Once the trailer is unloaded, it is rotated around to the other side of the dock and it is then reloaded with empty containers for the following day's activity. The movement of the tractor-trailer around to the west side of the facility is handled by a switcher. Yard supervisors document the date and time the tractor-trailers arrive and direct drivers to their outgoing loads. They also direct the switchers' cross-movement of material from east to west docks. There are no "shipping clerks" at Canton. Depending on the commodity, it is taken directly to the assembly line or it is placed in one of several small storage areas at the Deham assembly that will eventually disappear as Ryder moves into phase 3 at the LOC. After the trailer is unloaded at the Deham assembly plant, it is then reloaded with empty containers which are then transported back to the LOC, unloaded, and then become the material to go on the trailers for the following day's activity (i.e., a return to the supplier). Jennings testified that approximately 85 percent of all parts that are supplied to the Deham assembly plant move directly through the LOC.

Drivers do no work within the warehouse. They check their loads for proper loading prior to departure from the dock. On rare occasions, they may call upon a forklift operator to assist them in adjusting a load that was improperly loaded. On rare occasions, in transit, the driver has stopped his vehicle to reload material that has fallen off, including times when such has occurred upon approaching the dock. On those admittedly rare

⁴ Ryder drivers in the Highland Park Region serviced eight GM assembly plants. According to stipulation of the parties, the collective-bargaining agreement with District 2A, exclusive of warehouse employees and shipping clerks, covered up to 300 of those employees. About 500 employees, however, were covered by that agreement, apparently including employees not domiciled at the Highland Park facility.

occasions at the dock, the driver may call on a forklift operator to assist him.

The Canton LOC services only the Deham account. None of the Redford or Canton warehouse employees previously worked at another Ryder facility, nor have any of the warehouse employees been employed at another Ryder facility. Moreover, no employees from another Ryder facility have performed warehouse work at the Redford or Canton facilities. The drivers covered by the District 2A collective-bargaining agreement have no right to bid for warehouse work, have no right to work overtime at the warehouses, and have no right to relieve warehouse employees who might be absent or on vacation.

A separate seniority roster is maintained for LOC warehouse employees.

Higher management at Ryder has responsibility for its overall operation covering both drivers and warehouse employees. Jim LaRue, operations manager of the LOC facility, has separate and direct day-to-day supervision over the warehouse employees. Warehouse supervisors are authorized to discipline warehouse employees. Scott Tonkovich is responsible for the day-to-day operations out of Highland Park and for drivers assigned to the Canton warehouse. LaRue testified that shift supervisors at the Canton warehouse also have authority over the drivers assigned to Canton. However, there is very limited testimony as to the actual exercise of any authority by the shift supervisor over the drivers. A nonsupervisory, salaried “yard supervisor” directs the routine flow of traffic in the yard and tells a driver where to park in the yard. The shift supervisor directs a driver as to which load to take, i.e., either containers or containerized parts. There is no evidence as to what independent discretion, if any, the shift supervisor has to deviate from the preprogrammed pickup and delivery system. There is no evidence that a shift supervisor or any LOC manager disciplined any driver. No driver ever received any written discipline from a LOC shift supervisor or manager.

Betty Burdette is the Human Resources manager for Ryder’s automotive division, specifically the GM account. Her office is at the Highland Park facility. She is responsible for employees located at Deham, all drivers domiciled in Michigan, and all LOC employees with respect to recruiting, training, compensation, and collective-bargaining negotiation. She also hired the LOC supervisory staff. She testified that she maintains a weekly or twice weekly communication with LOC supervisors regarding disciplinary matters of LOC employees other than the most routine, e.g., discipline for attendance. She explained that she has instructed those supervisors to consult with her as to written discipline or where a “real issue” is involved. All copies of LOC employee written discipline are forwarded to her from the LOC. Separate duplicate copies of LOC employee files are maintained at both the LOC and at the Highland Park facility.

c. Analysis

If the Redford-Canton warehouse operation formed an accretion under Board law, then the issue of whether the Respondent recognized an uncoerced majority of the warehouse employees becomes mooted.

As stated in *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992), and recently quoted in *Progressive Service Die Co.*, 323 NLRB 1182 (1997), “[t]he board has defined an accretion as the ‘addition of a relatively small group of employees to an existing unit

where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.’” In determining whether the new employees share sufficient common interests with the members of the existing bargaining unit, the Board weighs various factors including “integration of operations, centralization of management and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history and interchange of employees.” Id. at 969; *GHR Energy Corp.*, 294 NLRB 1011, 1051 (1989) (quoting *Gould, Inc.*, 263 NLRB 442, 445 (1982)). The General Counsel points out, however, that the Board has also stated that because the accretion process fails to accord employees any representational choice, it will follow a “restrictive policy in its application.” *Dennison Mfg. Co.*, 296 NLRB 1034, 1036 (1989).

The Respondent argues that the following factors support the application of the accretion process: (1) functional integration, (2) geographic integration, (3) common working conditions and the 1995 collective-bargaining agreement, (4) common supervision, and (5) bargaining history.

District 2(a) additionally argues that there is a “significant employee interchange,” but that is clearly unsupported by the facts. There is functional integration and some employee interaction, but there is no exchange of employees between warehouse and driver work functions. Their jobs are separate and distinct. With respect to functional integration, i.e., integration of operations, the Respondent is correct. The work of the drivers covered by the 1995 collective-bargaining agreement who service the LOC is integrated with warehouse employees’ work to the extent that the flow of containers, full or empty, is sustained. The Respondent stresses the necessity of each clarification of workers to sustain this flow. However, production necessity, as far as I am aware, is not a factor to resolve the question of community of interest. The Respondent characterizes the transportation flow as akin to an “assembly line.” By that criteria, an almost infinite number of persons whose regular services are “necessary” for production or the maintenance thereof could arguably be characterized as integrated into the operation, but that would hardly determine employee community of interest. The real question is whether integration of operations effectuates an integration of employee interests. The Respondent’s and District 2A’s emphasis on functional integration are relevant more to the Employer’s needs than to the question of employee community of interest, particularly where there is minimal and rare contact between drivers and warehouse employees in the loading and unloading process where the trailers are detached at the docks and the drivers remain with their tractors or rest in their tractors in the exclusive lounges, impervious to the work conditions in the warehouse and where their work skills and hiring requirements (i.e., a CDL license) are so different.

The Respondent argues that in *Nave, Inc.*, 306 NLRB 926, 932 (1992), the Board adopted the administrative law judge’s finding of accretion in consideration of evidence of work integration which, it is argued, is less than that in the instant case. In that case, however, the judge found that the employees had similar working conditions, skills, functions, and were obliged to obtain a similar chauffeur’s driving license.

With respect to geographic proximity, the Respondent argues “the issue of a geographically remote location does not even come into play” because the drivers “work at the same location

as the warehouse employees.” Well, yes, the drivers generally, but not always, do report to the LOC but they do not work together therein or on the dock, and drivers do no warehouse work. The Respondent cites *Mercy Health Services North*, 311 NLRB 367, 368 (1993), where a unit of RNs was accreted into an existing unit despite a “40 mile geographic distance between the two locations and the difference in hours of operation and pay structure.” In that case, however, the Board stressed the factors, “commonality of day to day supervision,” “significant employee interchange,” and “common skills and functions.” Three of those sets of factors are clearly absent here, i.e., employee interchange in job function, and common skills and work functions.

With respect to working conditions, the Respondent argues that commonality exists because all employees are subject to the same “generalized conditions of employment,” even though they perform different work tasks. The Respondent argues simply and briefly that common working conditions exist because recognition was granted pursuant to an existing collective-bargaining agreement, thus granting the warehouse employees, “except for wages,” “identical” terms and conditions of employment, that the employees worked at the same warehouse and that although they had different functions, those functions were executed in sequence, i.e., deliver, unload, load, deliver, with the Respondent inaccurately asserting a “high degree of interchange and assistance among employees.”

The facts, however, support the contrary conclusion, as found above and as is accurately summarized by the General Counsel in the brief

Their hours of employment, wages, and job classifications (of drivers and warehouse employees) are different and Interstate Commerce Commission and Department of Transportation regulations apply solely to the drivers. There are differences in their respective contract provisions, including but not limited to the loss of seniority rights, paid holidays, coverage and entitlement to vacations, and lost time coverage, which differences demonstrate that the warehouse employees, due to the nature and conditions of their employment, require different terms of employment from the drivers.

The 1995 collective-bargaining agreement admittedly contains provisions which do not apply to the LOC employees including CDL (commercial driver’s license) testing, certified driver training, and references to DOT regulations. The seniority lists are separate. The drivers’ hourly rate of pay is \$14, whereas that of LOC employees is \$9.50 after the raise under their separate contract. Moreover, District 2A, in effect, conceded that the separate interests of the warehouse employees necessitated a separate contract.

I conclude that the performance of sequential interdependent functions with a minimal contact at a common worksite does not constitute “common working conditions.”

With respect to supervision, the Respondent argues that the drivers and LOC employees have common supervision, pointing to the centralized human relations department inclusive of recruitment, training, collective bargaining, and discipline; the common authority of Manager LaRue over drivers, switchers, and warehouse employees; and the supervision of LOC persons over warehouse employees and drivers.

However, when the warehouse operation was initiated, local management and subordinate supervision was created for day-to-day work activity. As found above, the authority over drivers by local shift supervisors, and even local management, was

testified to in generalized and conclusionary terms and therefore of little probative value. There is no hard evidence of any discretionary direction of drivers’ work by local supervisors, nor of any decision on their part that significantly affected the drivers’ working conditions in their disciplinary status.

The Respondent and the General Counsel both cite *Manitowoc Shipbuilding*, 191 NLRB 786 (1971), and *Aerojet-General Corp.*, 185 NLRB 794, 798 (1970), for the significant role of bargaining history in the resolution of an accretion issue.

With respect to bargaining history, the Respondent argues:

although the bargaining history for the [Deham] assembly plant operation is not long, it is absolutely clear the LOC employees would be covered [by the 1995 contract]. There is no contrary history. Again this factor favors accretion.

Although the Respondent anticipated a LOC operation, GM did not agree to it under the initial business agreement between it and Ryder. The 1995 collective-bargaining agreement addressed itself to the drivers’ jobs and working conditions and not those of warehouse employees. When the parties did negotiate the terms and conditions of employment for warehouse employees, they were later memorialized into a separate collective-bargaining agreement containing different terms, different provisions, and a different expiration date. Implicitly, if not explicitly, the parties therefore recognized the separate distinct interests of the warehouse employees.

I conclude that despite the factors of operational integration and overall centralized managerial control, including labor relations, they are outweighed by the factors of different work functions, different skills, different working conditions, different hiring requirements, the lack of interchangeability, minimal personal interaction, and the lack of a clear probative evidence of common daily supervision. I, therefore, find that the evidence fails to demonstrate that the drivers and warehouse employees share a sufficient community of interest to warrant the warehouse employees’ accretion to the drivers’ unit without reference to their choice of representation. Accordingly, the next issue is whether District 2A represented an uncoerced majority of warehouse employees when the Respondent extended recognition to it for those employees.

4. Majority status of District 2A at recognition

The Respondent argues that after the Redford facility operation in February 1997, of about 25 warehouse employees, 11 signed District 2A membership application cards on April 7, and 5 or 6 more signed on April 25. The Respondent claimed that by April 25, a majority of the warehouse employees had become District 2A members, giving it a “lawful card majority and as such the grant of recognition was proper.”

However, the recognition was granted prior to the employment of any permanent warehouse employees. The General Counsel argues that such recognition at a time when no employees were employed within the bargaining unit constituted a violation of Section 8(a)(1) and (2) of the Act, citing *Garment Workers (Bernard-Allmann Texas Corp.) v. NLRB*, 366 U.S. 731, 738 (1961).

The Party in Interest argues as follows:

While § 8(a)(2) is violated when an employer grants a CBA to a union prior to employing a substantial and representative complement of the projected workforce or at a time when the employer is not engaged in normal operations, *Kosher Plaza Supermarkets*, 313 NLRB 74 (1993); *Lowe’s Markets*, 311

NLRB 1281 [1285] (1993), there is no *per se* violation of § 8(a)(2) by the employer's recognition of a union as the bargaining representative for a future facility. *Apex Investigation and Security Co.*, 302 NLRB 815 [819], 138 LRRM 1205 (1991).

In the *Apex* case, however, the employer contended that a broad future recognition clause was *per se* unlawful as "an illegal accretion clause." The administrative law judge, whose decision was adopted by the Board, rejected that contention, citing *Frazier's Market*, 197 NLRB 1156 (1972), which held that such clauses will not necessarily compel an accretion but will be considered as one factor by the Board which will determine the accretion issue. Thus, we come full circle to the point in this case where I have concluded that no accretion existed. *Apex* provides no exculpation for future recognition of a union for a unit in which no unit members, i.e., permanent employees, are employed on the date of recognition, and when the Respondent was still hiring and not fully operative. As the General Counsel points out, subsequent representation authorizations executed prior to the execution of the collective-bargaining agreement does not excuse the earlier unlawful conduct. *R. J. E. Leasing Corp.*, 262 NLRB 373, 380 (1982).

5. Majority taint

a. Misrepresentation

The General Counsel argues that the membership application cards obtained by the District 2A representative, Lindke, do not constitute valid evidence of majority status because they are tainted by misrepresentation.

Hal Lindke, a driver domiciled at Highland Park and District 2A steward, testified that at 6 a.m. on April 7, 1997, he entered the picnic table break area of the Redford warehouse and introduced himself to a group of about 14 employees as an agent for District 2A and asked them to sign forms to join District 2A, answered questions about District 2A, and obtained 11 "signed applications." He testified that he had never previously been involved in soliciting union representation authorization forms.

The forms he used were entitled on the very top in light print "Application For Membership And Dues Checkoff Authorization." Thereafter followed the name of District 2A in larger, bolder letters. The body of the document in finer print refers to dues check-off authorization and place for signature. Thereafter, also in fine print, is application for membership language with space for a signature. District 2A introduced into evidence five such documents signed in both signature spaces by warehouse employees Pascal Smith, Rhonda Owens, Patrick Swift (alleged supervisor), and Nolan Hall. The signatures of Hall and Smith were dated April 7. The others were dated April 25, 1997.

Smith and Hall testified that when Hall asked Lindke the purpose of the document, they were told that it was only to obtain a meeting with a District 2A representative and that when Smith asked if the forms bound them in any way, Lindke stated that they did not. They both testified that they did not read the document they had signed.

Lindke testified, with hesitancy and uncertainty, that he could not recall whether any of the employees asked about the representational import of the form but that he told the employees that the purpose of the form was membership in District 2A. He then denied that any employee asked whether the form would be binding upon them, despite having no recollection

about representational questions one way or the other. On redirect examination, he gave a curious distinction to union organizing "pledge cards" and "membership applications." The pledge form, he defined, "is something you sign to join a union" and the latter, i.e., membership application, as "something that goes in your file as for dues and stuff like that."

Lindke testified that on April 25, he again visited the facility and met with eight second-shift employees from whom he solicited five or six similar signed documents, none of which were offered into evidence.

Because of Lindke's uncertainty in demeanor, his ambivalence as to the definition of the purpose of membership forms, and the greater certainty of Owens and Smith, I credit the latter two witnesses.

Generally, the Board does not invalidate an executed, clear, and unambiguous written authorization for representation, even when accompanied by statements of other purposes such as an election, unless the signature is solicited by a clear statement that the authorization will be used for no other purpose than an election. *Cumberland Shoe*, 144 NLRB 733, 1268 (1963); *Levi Strauss & Co.*, 172 NLRB 732, 734 fn. 7 (1968); *Southern Moldings*, 255 NLRB 839, 838, 840, 867-868 (1981); and *DTR Industries*, 311 NLRB 833, 838 (1993). I conclude that when Lindke solicited the 11 membership applications on April 7, he told the employees that the only purpose of the document was to obtain a meeting with representatives of District 2A and that the document did not bind them in any way. I find that this conduct constituted misrepresentation in the solicitation of majority designation which tainted District 2A's majority status.

b. Coercion

Patrick Swift is alleged to have occupied the position of a shift supervisor at the Redford warehouse who coerced third-shift employees into executing membership applications for District 2A. I agree with the Respondent that the evidence is insufficient to establish that whatever directions Swift gave to employees on the third shift, it involved use of independent judgment and discretion rather than routine conveyance of predetermined work flow orders. *M. J. Metal Products*, 325 NLRB 240 (1997). There is some evidence that Swift desired promotion to supervisory status but was rejected by the warehouse manager—the third shift already possessed one supervisor. Swift did attempt to assign *ad hoc* janitorial-type cleanup work to warehouse employees, some of whom refused to do it with impunity. Although Swift was observed to have performed some kind of paper processing work, he spent most, if not the predominant part, of his time operating a forklift truck. He dressed as a warehouse employee, was hourly rated and not salaried as a supervisor, and did not attend supervisory meetings. There is insufficient evidence that he used his own independent, unreviewable discretion to hire, fire, or discipline employees.

There is, however, evidence that Swift's duties placed him in a position as agent or spokesperson for the Respondent's policies, sufficient to have made the Respondent liable for his conduct in assisting District 2A.

When Rhonda Owens was hired as a warehouse employee at Redford, during her orientation process, Shift Supervisor Brandon Gray identified Swift to her as an "acting supervisor" who

would be “running things.”⁵ She observed Swift initialing timecards and soliciting information from employees as to which of them desired to go home early when work was slow or who desired to work overtime on those rare occasions when it was available. Swift informed them of the Respondent’s approval. Although it is not clear that he exercised any discretionary judgment in the approval announcement, he was the Respondent’s representative on these occasions. Swift was also seen spending some time in the warehouse office and giving instruction to the warehouse clerical in that office. Swift checked to see whether the containers were properly placed in the warehouse. Finally, and most significantly, he conducted meetings of the third-shift warehouse employees during which he informed them as to the quality of their job performance, announced when uniforms were to be distributed, and distributed Ryder notices to employees concerning their employment benefits package and other company memoranda. If employees had questions as to which route to finish—for example, when 2 different points could not be serviced at the same time—he instructed them as to how to proceed.

I conclude that Swift’s duties put him in the role of a conduit for the Respondent’s policies and decisions so that when he represented the Respondent’s position regarding union representation, it was reasonable for employees to believe that he spoke for the Respondent. Therefore, even though Swift may not have exercised sufficient independent discretion to be a supervisor, I find that the Respondent was liable for his conduct as its spokesperson. *Propellex, Inc.*, 254 NLRB 839 (1981); *Tyson Foods, Inc.*, 311 NLRB 352, 561–566 (1993); and *Kosher Plaza Supermarket*, 313 NLRB 74, 85 (1993).

Rhonda Owens testified that she first heard about District 2A on April 24 at the break area picnic table of the Redford warehouse when Swift threw some District 2A membership application forms down on the table while six or seven employees ate lunch. Swift told the employees that they had to sign the forms. When asked what this meant, Swift explained that although District 2A was already the majority bargaining agent, the forms needed to be signed. The employees resisted and refused to sign. Swift told them that if they did not sign the forms, Ryder was going to close the facility and they would be out of jobs.⁶

Lindke testified that on April 24 at 11 a.m., he walked into the Redford warehouse and encountered Swift who escorted him to the picnic table break area where Lindke spoke with about eight employees gathered there, of whom five or six signed District 2A membership applications. Lindke testified that Swift made no comments during the meeting, which lasted beyond midnight into the morning of April 25.

Owens testified that Swift had again repeated the closure threat to the employees at the picnic table, but it is not clear from her testimony whether it occurred before Lindke’s arrival. Since she did not place Lindke as being present, it must have occurred prior to his arrival because she testified it occurred before she signed the form. She testified without contradiction to a similar threat made to her individually in the warehouse area by Swift.

I conclude that not only did the Respondent, by its agent Swift, taint District 2A’s majority status by his coercive conduct, but that it also violated Section 8(a)(1) and (2) of the Act.

6. Subsequent coercion

After Madrzykowski had visited the warehouse and explained that District 2A would attempt to negotiate a separate contract for warehouse employees, Hall had contacted the UAW representatives. A meeting was arranged between UAW representatives and warehouse employees on the last Sunday in April, at which a petition designating the UAW as bargaining agent was drafted and later signed by 27 warehouse employees.

Tower initiated the conversation by asking Hall if the employees were interested in the UAW. When Hall responded affirmatively, Tower stated, without any qualification, that if the employees obtained UAW representation, the Respondent’s Redford facility would “go under.” Hall’s testimony is uncontradicted and must be credited. Tower’s remarks cannot be interpreted to be a mere personal opinion or a prediction based upon objective economic data. His statement constitutes an unqualified, absolute threat of closure and is violative of Section 8(a)(1) of the Act.

Hall testified that on some subsequent but unspecified date during the week of April 30, Human Resources Manager Burdette was visiting the facility when she approached Hall on the dock. Hall was again wearing UAW buttons on his shirt. Three other employees were present. According to Hall, Burdette told them that if the employees chose UAW representation, the Ryder facility would be closed. She gave no qualification or explanation.

Warehouse employee Pascal Smith testified that on May 5, between 2 and 3 p.m., he was present at a conversation between warehouse employee Andre Avery in the presence of several employees near the break area picnic table. Smith testified, in general terms, that they were discussing “about issues that were going on at the facility” when Burdette stated that if the employees became represented by the UAW, the GM account would be pulled and all warehouse employees would lose their jobs. He recalled that she also stated that the employees could meet that day with visiting Senior Vice President Myles Raper from Ann Arbor, Michigan, and express their concerns to him.

Burdette admitted that she did indeed have a conversation with Avery in the Redford warehouse on about May 1, on a day when Senior Vice President Raper was visiting the facility. According to Burdette, while on his forklift, he questioned her as to who the visitors were and whether they were GM representatives. According to Burdette, she explained that they were Ryder managers, including Raper, and that he had come to investigate and “to determine if he is going to keep the [GM] business or give it back.”

Burdette testified that Raper had told her at the time when GM had not yet signed a contract, that productivity “was shot,” that GM had numerous Deham people visiting the Redford facility “telling us what to do,” contrary to what Ryder wanted done; and that because of “all those problems,” Raper did not “know whether we should do the business or not.” Burdette failed to testify that she related Raper’s comments to Avery to explain her remarks to him. She denied the remarks attributed to her by Smith and Hall. She admitted that she observed employees wearing UAW buttons in the warehouse that day. She admitted that although Raper is superior to Jennings, it is Jennings’ function to monitor Ryder’s business relationship with GM. Nothing in Jennings’ testimony in any way reflects any doubt of viability of the GM business arrangement nor of any operational friction. Thus, she is uncorroborated as to Raper’s alleged expressed concerns, and she is inconsistent

⁵ Owens’ testimony in this regard is uncontradicted.

⁶ Owens’ is uncontradicted. Swift did not testify.

with the thrust of Jennings' optimistic characterization of the viability of the venture. Despite Burdette's loudly, dramatic protestation of sincerity, I found her demeanor to have been exaggerated and ultimately unconvincing. I find Hall and Smith more convincing. Moreover, her remarks parallel those of Shift Supervisor Tower when he reacted to Hall's wearing of UAW buttons. I find that Burdette, unqualifiedly and without reference to objective criteria, threatened employees that UAW representation of itself would cause closure of the warehouse and loss of their jobs; Respondent, by her conduct, violated Section 8(a)(1) of the Act.

7. Procedural defenses

a. Section 10(b)

The Respondent argues that the underlying unfair labor practice charge was not filed until May 1997, i.e., 2 years after the May 1995 collective-bargaining agreement which included warehouse employees in the unit. The Respondent argues "To the extent that the contract recognized an 'illegal' unit, the violation would have ripened upon the execution of the agreement in 1995." The Respondent argues that the 1995 agreement is "presumptively valid" and unambiguous on its face and, therefore, the General Counsel "is prevented from using parole or subsequent extrinsic evidence to attempt to prove a violation. *Bryan Mfg. Co.*, 119 NLRB 502 (1957).

The issue here, however, is not the legality of the 1995 contract nor whether the Respondent violated the Act by entering that agreement. No LOC existed in 1995. The alleged violation occurred well within the 10(b) period when the Respondent recognized District 2A as representative of a nonaccreted new unit of warehouse employees at a time when it did not possess an uncoerced majority support of the unit employees, who were in the process of being hired. I conclude, however, that a pre-existing contract covering nonexistent employees cannot shield subsequent unlawful conduct and that any earlier unfair labor practice charge would have been premature.

b. Laches

Although the Respondent invokes the doctrine of laches, in effect it argues that it was just unfair for the Regional Director to have dismissed the first charge, in effect encouraging the parties to negotiate a separate contract for warehouse employees, and then revoke the dismissal and issue a complaint against the Respondent who acted in reliance on the dismissal. This argument is entwined with the Respondent's final defense that the Board should allow the parties to "voluntarily agree to the enlargement or alteration of an existing unit," citing, *inter alia*, *Ohio Power Co.*, 203 NLRB 203, 238 (1973), *enfd.* 490 F.2d 1383 (6th Cir. 1974). I find nothing in precedent cited by the Respondent which encourages the parties to voluntarily agree to an expanded unit when such agreement violates the representational rights of nonaccreted employees.

With respect to laches, such does not lie against the General Counsel, particularly where no prejudice had been shown. *F. M. Transport, Inc.*, 302 NLRB 241 (1991); *Tri-County Roofing*, 311 NLRB 1368, 1384 (1993). With respect to the purported detrimental reliance on the Regional Director's dismissal of the original charge, nothing in the Regional Director's basis for dismissal, either implicitly or explicitly, suggested that it was appropriate for the Respondent and District 2A to negotiate a separate collective-bargaining agreement covering the warehouse employees. As the General Counsel correctly observes, a

reinstatement of a charge by a Regional Director during the pendency of an appeal of its dismissal is proper and consistent with long-standing practice. As long as the appeal is pending, the charge continues to exist. *Children's National Medical Center*, 322 NLRB 205 (1996). Inasmuch as the charge was still pending, I conclude that the Respondent proceeded at its risk when it negotiated a separate contract for the warehouse employees.

CONCLUSION OF LAW

On the foregoing findings of fact, I conclude that the Respondent, an employer engaged in commerce within the meaning of the Act, violated Section 8(a)(1) and (2) of the Act on February 1997 by granting recognition to District 2A as the representative of its loaders, dockmen, and warehouse employees then located at its Redford, Michigan warehouse facility but later employed at its Canton, Michigan LOC facility, at a time when those employees had not been accreted to a preexisting collective-bargaining unit and a time when District 2A did not represent an uncoerced, untainted majority of those employees. Further, the Respondent violated Section 8(a)(1) and (2) of the Act in August 1997 by entering a collective-bargaining agreement with District 2A covering that non-accreted unit of LOC facility warehouse employees.

I further find that the Respondent violated Section 8(a)(1) and (2) of the Act in April and early May 1977 by the conduct of its agent, Pat Swift, and Human Resources manager, Betty Burdette, in threatening closure of its facility and loss of jobs for warehouse employees if they refused to sign membership applications for District 2A. Finally, I find that the Respondent violated Section 8(a)(1) of the Act in early May 1997 by the conduct of its supervisor, John Tower, and Human Resources manager Betty Burdette in threatening employees with the closure of its warehouse facilities if they designated the UAW as their bargaining agent.

I find that these unfair labor practices affect commerce within the meaning of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act.

Having found that the Respondent unlawfully granted recognition to District 2A as the exclusive bargaining representatives of its loaders, dockmen, and warehousemen now employed by it at its Canton, Michigan LOC facility, I recommend that the Respondent be ordered to withdraw and withhold recognition from District 2A as to those employees and cease giving effect to any collective-bargaining agreement, modification, extension, renewal, or supplemental agreement between it and District 2A as to those loaders, dockmen, and warehousemen until such time as District 2A shall have been certified by the Board as the exclusive bargaining representative of an appropriate bargaining unit of loaders, dockmen, and warehousemen employed at the Canton, Michigan LOC facility. Nothing in this proposed Order will authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, or conditions of employment which may have been established for the Canton LOC facility loaders, dockmen, and warehousemen by any such agreement. Inasmuch as certain of those employees signed dues-checkoff authorizations pursuant to a collective-bargaining agreement to which the Respondent must cease

giving effect, the Respondent may no longer withhold dues or other moneys from the earnings of its Canton LOC facility loaders, dockmen, and warehousemen pursuant to any such agreement. I further recommend that the Respondent reimburse all present and/or former Redford or Canton, Michigan LOC facility loaders, dockmen, and warehousemen for all initiation fees, dues, or other moneys exacted by on or behalf of District 2A pursuant to any dues-checkoff authorizations, or any collective-bargaining agreement or otherwise, together with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondent, Ryder Integrated Logistics, Inc., Canton, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with the closure of its warehouse operations if they refuse to sign membership applications for District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers.

(b) Threatening employees with the closure of its warehouse operations if they designate the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO as their collective-bargaining representative.

(c) Recognizing and bargaining with District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers, its successor, or assigns, as the collective-bargaining representative of loaders, dockmen, and warehousemen employed at its Canton, Michigan LOC facility unless and until that Union has been certified by the National Labor Relations Board as the exclusive bargaining representative of any such employees in an appropriate unit.

(d) Giving effect to its collective-bargaining agreement with District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, affiliated with American Maritime Officers, its successor, or assigns, with respect to the warehouse employees referred to above and any modifications, extensions, renewals, or supplements that may have been applied to those employees, provided that nothing in this Order

shall require the withdrawal or enhancement of any wage increase or other benefits, terms, and conditions of employment that may have been established pursuant to any such agreement.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse all former and present loaders, dockmen, and warehousemen employed at the Redford or Canton, Michigan LOC for all initiation fees, dues, and other moneys, if any, paid by or withheld from them in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its Redford and Canton, Michigan LOC facility copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 28, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."